IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.230 OF 2006

Vasanti Dattatraya Pednekar & Ors. .. Appellants
Vs.
Sumati Khanderao Shivalkar & Ors. .. Respondents.

Mr.M.B.Baadkar for the appellants.
Mr.Gauri Godse for respondent nos.1 to 6.

CORAM : D.B.BHOSALE, JJ.
DATED : 11TH JULY, 2007.

P.C.:

. Heard learned counsel for the appellant and respondent nos.1 to 6.

2. This second appeal is directed against concurrent findings recorded by the courts below in a suit filed by the respondents-plaintiffs by which the suit has been decreed and the appellants-defendants were directed to vacate the suit house. Mr.Baadkar, learned counsel for the appellants submitted that the appellants were in lawful possession of the suit house. He submitted that the appellants were tenants in the land bearing survey no.77/1 (New No.77/07) wherein the suit house situate. The appellants were in possession of this land and the suit house on 1.4.1957 as tenants and by virtue of the provisions contained in section 32-G of the B.T. & A.L. Act, they became deemed purchaser on tillers day. He further submitted that all subsequent proceedings

relating to this property are null and void including the instant suit and the reference under section 85A of the B.T. & A.L. Act. In support of this submission he placed heavy reliance upon the judgment of **Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan Trade and Anr. AIR 1983 Supreme Court 643.** In short, Mr.Baadkar submitted that issue of tenancy could not have been re-opened in view of the fact that the appellants-defendants were in possession of the land as the tenants where the suit house situate. I am informed that the decree has already been executed long back.

3. It appears that in the present proceedings issue of tenancy was raised and referred to the tenancy authorities under section 85-A of the Bombay Tenancy and Agricultural Lands Act. All the tenancy authorities decided the said issue against the appellants and this court in writ petition No.6210 of 2003 confirmed the orders passed by the tenancy authorities and dismissed the writ petition on 3rd December, 2003. It appears that the claim of the petitioner being a tenant of the land bearing survey No.77/1 has been rejected in the tenancy proceedings. The order of this court in writ petition no.6210 of 2003 has attained finality. In the circumstances I find no merit in the submissions of the learned

counsel for the appellants. Considering that there are concurrent findings recorded by the courts below and I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court in second appeal to disturb the findings of fact, this second appeal deserves to be dismissed. Order accordingly.

(D.B.BHOSALE, J.)